Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

76 Ind. 223; *Voss* v. *Bank*, 83 Ill. 599; *Martin* v. *Bank*, 6 Har. & J. 235; *Bank* v. *Peck*, 127 Mass. 298 (*obiter*).

It is of course well settled that in cases of this sort the bank may, if it chooses, refuse to pay so much of its debt to the depositor as will equal the debt which the depositor in turn owes the bank. If this right of refusing to pay, which is sometimes called a set-off and sometimes a lien, is a genuine lien, it would seem to follow that the bank, by voluntarily paying the depositor's claim, relinquished a lien, and so discharged a surety on the depositor's note, in like manner as the relinquishment of any other security would discharge a surety. May not this right of refusing to pay the depositor's claim very properly be regarded as a lien — a lien on the claim? It gives the bank the right of retaining control over the claim for the purpose of security, and such a right, when given by law over the property of another, is certainly very similar to a lien. To be sure it is a lien on a *chose in action*, but that does not seem to be an insuperable difficulty. A stock certificate is a *chose in action*, and clearly the bank would have a lien on a stock certificate deposited with it, even if the certificate happened to be one of its own, and so, as in the principal case, a claim against the bank itself. The only difference, so far as is perceived, between the case of the stock-certificate and the principal case, is that in the latter there is no formal assignment to the bank of the depositor's claim, the *chose in action*. But as the law has already given the bank power to deal with the claim for its security in like manner as if it had been assigned, a formal act of assignment does not seem to be called for.

If it be conceded that the banker's right of control over the depositor's claim is a lien on the claim, there would seem to be no difficulty on principle with the Kentucky decision; for payment of the claim would clearly be a relinquishment of the lien, and so a discharge of the surety. That the result which the case reaches is a desirable one from the standpoint of justice and convenience seems hardly open to question. If the bank wishes to be polite, and honor its depositor's checks regardless of the state of accounts between them, it ought not to call on the surety to make good the resulting loss.

STATUTE OF LIMITATIONS. — An interesting point, apparently a novel one in this country, has arisen in the Pennsylvania courts (*Lewey* v. *Frick Coke Co.*, 31 Atl. Rep. 261). The defendant company mined coal under the plaintiff's land, inadvertently it would seem, though the report is not clear. For seven years the plaintiff had no means of discovering the defendant's act. The defendant, in an action of trespass, set up the Statute of Limitations. The court, in its alternative capacity of court of equity, treated the action as though the plaintiff had brought a bill of account for coal taken; and declined to apply the Statute of Limitations on the ground that before a plaintiff has had reasonable means of discovering the existence of his cause of action, equity will not allow the Statute of Limitations to operate as a bar to his suit. The court satisfactorily distinguishes an underground trespass, with its exceptional characteristics, and its difficulty, often impossibility, of speedy discovery, from a surface trespass, where the owner of the close is held to know, constructively at least, of any invasion of his boundaries. Some hesitation may be felt in admitting the propriety of allowing a bill of account for coal taken with-

out more; or in accepting the broad rule here laid down as governing the courts of equity in applying the Statute of Limitations. Yet English authority is in accord with the case on both points (*Ecclesiastical Commissioners* v. *N. E. R. Co.*, 4 Ch. Div. 845; Bainbridge, Law of Mines, 311). Certainly the doctrine that equity will not apply the Statute of Limitations before the plaintiff has been guilty of laches appears sound on principle (*Brooksbank* v. *Smith*, 2 Y. & C. 58) and thoroughly sensible. The case is likely to be followed when the question arises in other jurisdictions. To be sure, the court in the principal case attempts to lay down, as another reason for not applying the statute, that failure to disclose an inadvertent trespass is fraud; but that position seems indefensible either on principle or authority (*Dawes* v. *Bagnall*, 23 W. R. 690).

BREACH OF CONTRACT TO DELIVER IN INSTALMENTS.— A recent New Jersey case (*Gerli* v. *Poidebard Silk Mfg. Co.*, 31 Atl. 401) denies the doctrine of *Norrington* v. *Wright*, 115 U. S. 188, that, when there is a contract to deliver goods in instalments, a failure as to the first instalment gives the buyer a right to terminate the contract. In the New Jersey case the agreement called for the delivery of thirty bales of silk in three equal monthly instalments, and the defendant was held unjustified in cancelling the contract upon a failure to deliver the first instalment. The ground for this decision seems to have been that the plaintiff's breach did not evince an intention to abandon the contract, or not to be bound by its terms, following the English rule laid down in *Mersey Steel Co.* v. *Naylor*, 9 App. Cas. 434.

Neither the rule in *Norrington* v. *Wright*, which perhaps would not be followed literally by the United States Supreme Court, nor the one recognized by the New Jersey Court, seems satisfactory in all cases. A breach in regard to the first instalment ought not to be fatal to the entire contract, unless of such extent or nature as substantially to imperil the objects of the contract, or to create a reasonable apprehension of such a consequence. Other things being equal, doubtless an abandonment of the contract is often justified by a breach *in limine* of less magnitude than would be required if it occurred after part performance by the party in default; but this is not merely because the breach occurs at the outset, but because a breach at that time may be more significant of ultimate failure than one that happens later, and especially because no equities have been created between the parties by benefits received under the contract.

On the other hand, any breach that does substantially interfere with the objects of the contract ought to be good ground for a rescission or abandonment, no matter how excellent the intentions of the party in default. That the aggrieved party may obtain compensation for future breaches as well as past ones, should his confidence prove misplaced, does not help the New Jersey argument very much. The same might be said of any contract whose conditions have been partly but substantially violated, and the abandonment of a broken contract would seldom be legally possible to the innocent party. Whatever may be the ethical importance of good intentions they manifestly have little commercial value to the man who sees a lawsuit between himself and the realization of the profits of his contract.

It is hardly good common sense, and it is difficult to believe it is good